

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EDWIN ERROL ENGLETON,
Plaintiff,
v.
RIVERSIDE COUNTY SHERIFF'S
DEPT. et al,
Defendants.

No. EDCV 22-586-SB (AGR)

**ORDER OF DISMISSAL
WITHOUT PREJUDICE FOR FAILURE
TO PROSECUTE**

In this prisoner civil rights action, on May 18, 2022, the Court issued an order directing service process of the summons and complaint by the United States Marshal upon Defendants Riverside County Sheriff's Department and Sergeant Vencent. (Dkt. No. 8.) On June 6, 2022, Process Receipt and Return (Form USM-285) of summons and Complaint upon Defendants Riverside County Sheriff's Department and Sargent Vencent were filed indicating service on May 24, 2022. (Dkt. Nos. 10-12.)

On July 1 and 5, 2022, the Court's mail was returned as undeliverable by the postal service with a notation "inactive." (Dkt. Nos. 13-14.) The CDCR's online inmate locator website does not show an inmate by Plaintiff's name and CDCR number

1 (BP8212). Upon inquiry at the last known prison where Plaintiff was previously housed,
2 the Court was informed that Plaintiff was released on June 14, 2022. To date, Plaintiff
3 has not filed a notice of change of address.

4 On July 18, 2022, the magistrate judge issued an Order to Show Cause in writing,
5 by August 18, 2022, why this action should not be dismissed without prejudice for
6 failure to prosecute. (Dkt. No. 15.) The Order to Show Cause was returned as
7 undeliverable by the postal service. (Dkt. No. 16.) Plaintiff did not respond to the Order
8 to Show Cause or request an extension of time to do so.

9 It is well established that a district court has the authority to dismiss a plaintiff's
10 action because of his failure to prosecute or comply with court orders. See Fed. R. Civ.
11 P. 41(b); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed.
12 2d 734 (1962) (court's authority to dismiss for lack of prosecution is necessary to
13 prevent undue delays in the disposition of pending cases and avoid congestion in
14 district court calendars); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (district
15 court may dismiss action for failure to comply with order of court); *Carey v. King*, 856
16 F.2d 1439, 1440-41 (9th Cir. 1988) (district may dismiss action for failure to prosecute
17 after mail is returned by postal service as undeliverable).

18 "If mail directed by the Clerk to a *pro se* plaintiff's address of record is returned
19 undelivered by the Postal Service, and if, within fifteen (15) days of the service date,
20 such plaintiff fails to notify, in writing, the Court and opposing parties of said plaintiff's
21 current address, the Court may dismiss the action with or without prejudice for want of
22 prosecution." Local Rule 41-6.

23 In determining whether to dismiss a case for failure to prosecute or failure to
24 comply with court orders, a district court should consider five factors: (1) the public's
25 interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
26 (3) the risk of prejudice to the defendants; (4) the public policy favoring the disposition
27 of cases on their merits; and (5) the availability of less drastic sanctions. See *In re*
28

1 *Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); *Ferdik*, 963 F.2d at
2 1260-61 (failure to comply with court orders).

3 The first two factors – the public’s interest in expeditious resolution of litigation
4 and the court’s need to manage its docket – weigh in favor of dismissal. Plaintiff has
5 failed to file a notice of his change of address. By failing to file a notice of his latest
6 change of address, he has rendered it impossible for the court to contact him. Plaintiff’s
7 conduct hinders the court’s ability to move this case toward disposition, and indicates
8 that Plaintiff does not intend to litigate this action diligently.

9 The third factor – prejudice to defendants – also weighs in favor of dismissal. A
10 rebuttable presumption of prejudice to defendants arises when there is a failure to
11 prosecute diligently. *Eisen*, 31 F.3d at 1452-53. That presumption may be rebutted
12 when a plaintiff proffers an excuse for delay. Plaintiff has failed to come forward with
13 any excuse or reason for delay.

14 The fourth factor – public policy in favor of deciding cases on their merits –
15 weighs against dismissal. It is, however, a plaintiff’s responsibility to move a case
16 towards a disposition at a reasonable pace and to avoid dilatory tactics. See *Morris v.*
17 *Morgan Stanley Co.*, 942 F.2d 648, 652 (9th Cir. 1991). Plaintiff has not discharged this
18 responsibility. In these circumstances, the public policy favoring resolution of disputes
19 on the merits does not outweigh Plaintiff’s failure to notify the court of his change of
20 address or respond to orders of the court.

21 The fifth factor – availability of less drastic sanctions – weighs in favor of
22 dismissal, again because Plaintiff has failed to keep the court apprised of his current
23 address. See *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (“It would be absurd
24 to require the district court to hold a case in abeyance indefinitely just because it is
25 unable, through the plaintiff’s own fault, to contact the plaintiff to determine if his
26 reasons for not prosecuting his lawsuit are reasonable or not.”).

1 Taking all of the above factors into account, dismissal for failure to prosecute is
2 appropriate. Absent a current address for Plaintiff, there is nothing more the court can
3 do.

4 Accordingly, IT IS ORDERED that this action is DISMISSED WITHOUT
5 PREJUDICE for failure to prosecute.

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8 DATED: October 14, 2022



STANLEY BLUMENFELD, JR.
UNITED STATES DISTRICT JUDGE